IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 18291 of 2004(C)

PETITIONER:

SMT.NABEESA, W/O.A.KARIM, AGED 41
YEARS, RESIDING AT ATTAYAMPATHI,
GOVINDAPURAM P.O., MUTHALAMADA, PALAKKAD-678 507.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE
SECRETARY, HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR, CENTRAL BUREAU OF
INVESTIGATION, NEW DELHI.

3. THE SUPERINTENDENT OF POLICE,
PALAKKAD.

4. THE SUB INSPECTOR OF POLICE,
KOLLENGOD POLICE STATION, PALAKKADU.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.NO.18291 OF 2004

Dated this the 27th ,day of November, 2006.

JUDGMENT

The petitioner is the mother of a 12 year old girl, who was murdered and her body was found abandoned stuffed in a gunny bag on 21.07.1997. Investigation was conducted by the police. The petitioner had occasion to come to this Court complaining about the allegedly inadequate investigation. That petition was disposed of by order dt.1.6.1999 in O.P.2818 of 1998 by this Court, a copy of which is produced as Ext.P1. At that stage, it was reported that investigation is complete and a charge sheet/final report has been filed against two accused persons. The 2nd accused who was charge sheeted is none other than the husband of the petitioner herein, ie. the father of the child, who was murdered.

2. The petitioner appears to have accepted Ext.P1 order. The order was not challenged. Though at the Bar it was submitted earlier that Ext.P1 order was challenged in writ appeal before this Court, it is submitted now that there has been no such challenge. In short, the petitioner appears to have accepted Ext.P1. It shows that after investigation, the petitioner's husband himself was arrayed as the 2nd accused along with another with whom he is alleged to have shared the common intention to commit the murder of his daughter.

3. The further proceedings continued and the petitioner's husband along with the co-accused faced trial before the learned Additional Sessions Judge (Fast Track - I), Palakkad. In that prosecution, PWs 1 to 29 were examined and Exts.P1 to P23 were proved. M.Os 1 to 13 were also marked. No defence evidence was adduced. The learned Sessions Judge by Ext.P2 judgment found that the prosecution has not succeeded in proving the guilt of either of the two accused. Accordingly, the learned Sessions Judge proceeded to pass the judgment dated 16.11.2002 in Sessions Case No.246 of 1998, a copy of which is produced as Ext.P2, in this Writ Petition.

4. The petitioner has come to this Court again. What is her grievance ? The learned counsel for the petitioner submits that the petitioner, the mother of the victim/child is anguished that the mystery relating to the murder of her child remains unresolved even now. The counsel urges that the petitioner has a right to know what had happened to her child. The counsel submits that the absence of an efficient and proper investigation has led to the petitioner being left in the lurch unable to know how her minor child had met with her death. The counsel submits that the petitioner has again come before this Court only because a proper investigation was not conducted. All the crucial witnesses had turned hostile in the trial before the Sessions Court. They did not support the prosecution case at all. At

the end of the day, there was only the semblance of an evidence that blood of the same group as that of her deceased child was available in the bathroom of the 1st accused. The prosecution was not able to place any better evidence. Witnesses including the petitioner had turned hostile. The learned counsel for the petitioner submits that according to the petitioner, it is not a case of the witnesses speaking falsehood before the court below. It is a case where proper and true investigation was not conducted. In these circumstances, it is prayed that further investigation may be ordered to be conducted and such further investigation may be entrusted to the Central Bureau of Investigation.

5. The learned Stand Counsel for the C.B.I opposes the prayer. He submits that the prayer is unknown to law. Investigation was conducted earlier. The final report has been filed. Even the petitioner appears to have accepted the final report in as much as she did not choose to challenge Ext.P1 order. The mere fact that the witnesses turned hostile to the prosecution and the court could not resolve the mystery of the crime is no reason at all to direct any further investigation. It cannot be the law that until conviction is secured, further trial and investigation should continue. The prayer is misconstrued, submits the learned Stand Counsel for the C.B.I.

6. The learned counsel for the petitioner places reliance on the decision in **Zahira Habibulla H.Sheikh v. State of Gujarat** [(2004) 4 Supreme Court Cases 158] (known popularly as the Best Bakery case) and various further decisions in the same case reported in (2005) 4 SCC 292 & (2006) 3 SCC 374. He contends that in an appropriate case, the hands of this Court are not tied and if this Court is convinced that a proper investigation has not been conducted and a proper trial had not not been held, it is open to court to direct re-trial and reinvestigation also.

7. I am in agreement with the learned Standing Counsel for the C.B.I. It is now trite that the dictum in the Best Bakery case cannot be applied mechanically in all other situations. That was indeed an exceptional case where the Supreme Court felt that a mockery of justice by a farcical trial. In these circumstances the said dictum in the Best Bakery Case cannot be imported to the factual situation in other cases unless they are comparable. The Supreme Court made this clear in a subsequent decision in **Satyajit Banerjee v. State of W.B** [2005(1) SCC 115]. The learned Judges in para.26 have made the following observations.

> "The law laid down in Best Bakery case in the aforesaid extraordinary circumstances, cannot be applied to all cases against the established principles of criminal jurisprudence. Direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence. In Best Bakery case, the

> first trial was found to be afarce and is described as “mock trial”. Therefore the direction for retrial was in fact, for a real trial. Such extraordinary situation alone can justify the directions as made by this Court in Best Bakery case.”

8. In this case, investigation was conducted by the police. Final report had been filed. It would appear from the judgment Ext.P2 that the court could not come to any safe conclusion because there was hostility on the part of witnesses including the petioner herein.

9. I am certainly not satisfied that the situation available in this case is in any way comparable to the situation in the Best Bakery case. I am certainly not persuaded to invoke the powers under Section 482 Cr.P.C to direct retrial or reinvestigation in this case. Unfortunate though it be that the murderers of the young child could not be brought to book, this certainly is not a case where the powers under Section 482 Cr.P.C can or ought to be invoked to direct a fresh investigation and trial.

10. This Writ Petition is, in these circumstances, dismissed.

R.BASANT
JUDGE

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